PART IV

Section 2-A

MYSORE BILLS AND REPORTS OF SELECT COMMITTEES THEREON.

NOTIFICATION.

No. L.D. 523—L.A. 47-50-30, dated Bangalore, 31st May 1951.

In pursuance of Rule 110 of the Mysore Legislative Assembly Election Rules, His Highness the Maharaja of Mysore is pleased to direct the publication of the following Report of the Election Tribunal, referred to in Notification No. L.D. 491—L.A. 47-50-28, dated 28th May 1951.

BEFORE THE ELECTION TRIBUNAL, BANGALORE.

Dated the 16th day of April 1951.

PRESENT :

1. *Rajadharmaprasakta*, Sri S. Venkataranga Iyengar, B.A., L.L.M., Retired Judge, High Court of Mysore (*President*).

2. Sri K. C. Lingiah Gowder, M.A., LL.B., Principal District and Sessions Judge, Mysore Division, Mysore (*Member*).

3. Sri S. Kanakaratnaraj, B.A., B.L., Principal District and Sessions Judge, Bangalore Division, Bangalore (*Member*).

M. Krishnaswamy Pillai, son of Kariappa Pillay, aged 50 years, Proprietor, Shanmugam Weaving Factory, Srirampuram, Bangalore City ... ... *Petitioner.*

Vs.

V. S. Narayana Rao, Correspondent and Publisher, 6th Cross Road, Malleswaram, Bangalore City ... ... *Respondent.*

Petitioner by Sri V. Krishna Murthy.

Respondent by Sri S. K. Venkataranga Iyengar.

REPORT.

1. This election petition was filed by the petitioner, Sri M. Krishnaswamy Pillay under rule 94 of the Mysore Legislative Assembly Election Rules, calling in question the election of Sri V. S. Narayana Rao, the Respondent, as a member of the Mysore Legislative Assembly.

2. Consequent on the resignation of Sri K. Hanumantiah of his membership in the Mysore Legislative Assembly from the Bangalore City—General Constituency, the electors of that constituency were called upon, by a notification in the *Mysore Gazette*, dated 20th July 1950, to elect another person to fill the casual vacancy that had thus occurred in the Mysore Legislative Assembly. Besides the petitioner and the respondent, four other persons filed their nomination papers. On 7th August 1950, the date fixed for the scrutiny of the nomination papers, those of D. N. Krishniah Setty and M. Krishnaswamy Pillay were rejected and those of the other persons were accepted. We are not concerned in this case with the rejection of D. N. Krishnaiah Setty's nomination paper. The grounds on which the Returning Officer, who was the Commissioner of the Bangalore City Municipality, rejected the nomination paper of the petitioner were stated by him as follows in his order, Expt. B-3 :—

> "The nomination paper of the candidate is objected on the ground that the name of the proposer G. V. Ramachar, electoral number 8779 is not in the corrected additional electoral roll in the VII Division as noted in the nomination paper. Since the nomination paper is not properly proposed, the same is rejected."

Not being satisfied with that order, the petitioner approached the Government of Mysore with an application under Rule 44-A of the Mysore Legislative Assembly Election Rules for redress. The Government of Mysore appear to have felt a doubt as regards their powers to dispose of an application filed under that rule. They forwarded that petition to the Election Commission, India, with an observation that after the Provisional State Legislature (Casual Vacancies) Order, 1950, passed by the President of India on 20th May 1950, a petition under Rule 44-A will have to be heard and disposed of by an Election Tribunal constituted by the Election Commission, India. Thereupon, some correspondence seems to have ensued between the Election Commission, India, and the Government of Mysore with the result that the application under Rule 44-A was not disposed of on its merits. We are not concerned with that aspect of the case as it is not very material for the purposes of disposal of this petition as will be shown presently while dealing with issue

number 2. A petition stated to have been filed by the petitioner before the High Court of Mysore, for a writ for the stay of the election also proved infructuous. We are not concerned even with that aspect of the case. The election took place on 20th August 1950, the date fixed therefor and the respondent, who secured the largest number of votes, was declared duly elected on 25th August 1950. Thereupon the petitioner presented this election petition purporting to be under Rule 95 of the Mysore Legislative Assembly Election Rules, but which was really one under Rule 94, to the Government of Mysore. The Government forwarded that application to the Election Commission, India. The latter constituted this Election Tribunal for the trial of the petition and sent the petition to this Tribunal.

3. The ground on which the petitioner seeks to have the election of the respondent declared void is that the Returning Officer improperly rejected his nomination paper and it materially affected the result of the election.

4. The respondent, in his written statement, has contended that the order of the Returning Officer rejecting the petitioner's nomination paper was correct. He has also added that he would not admit the allegation in the petition that the identity of the proposer was beyond doubt. H has also raised several questions of law in support of his contention that this petition should be dismissed *in limine*.

5. The pleadings of the parties have given rise to the following issues:—

(1) Was there no valid nomination of the petitioner by reason of the fact that the proposer Sri G. V. Ramachar subscribed to two nomination papers, *viz.*, one of his own and the other that of the petitioner.

(2) Whether the petitioner, by reason of the fact that he preferred an application under Rule 44-A to the Government cannot seek redress by means of an election petition filed under Rule 94 of the Mysore Legislative Assembly Election Rules that the election of the respondent should be declared void on the ground of improper rejection of his nomination paper by the Returning Officer.

(3) Is the contention of the respondent that the petitioner can only canvas in an election petition, the result of the election on the ground of any irregularity at the stage of the election and not on the ground of any irregularity at the stage of the scrutiny of the nomination paper, tenable?

(4) Whether it is necessary or proper to implead the Returning Officer as a respondent in these proceedings and whether the omission to implead him as a respondent is fatal to this election petition.

(5) Whether there has been no valid presentation of this election petition to a validly constituted authority and within the time prescribed by the rules and whether therefore, the election petition is liable to be dismissed *in limine*.

(6) Whether there has been an improper rejection of the petitioner's nomination paper by the Returning Officer and whether the election of the respondent has or has not been materially affected by reason of such improper rejection.

(7) Whether Sri G. V. Ramachar who has subscribed to the nomination paper of the petitioner as proposer is the identical person as the individual whose name appears in the final voter's list as bearing serial number 8779.

Elaborate and able arguments were addressed by Counsel on both sides on issues 1 to 5 at first and we could not immediately proceed to record the findings on those preliminary issues, as certain papers that were wanted from the Government were not produced until after some witnesses for the petitioner had been examined. We therefore considered it proper to dispose of the issues of law as well as those of fact at one and the same time after the evidence was closed.

6. Issue number 5 is a very important one and its importance cannot be underestimated, because it is a fundamental principle in all election laws that an election cannot be called in question except by means of an election petition *presented to a properly constituted authority*. That principle has been embodied not only in Article 329 (b) of the Constitution of India but also in Rule 93 of the Mysore Legislative Assembly Election Rules, Article 329 (b) runs thus:

> "no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature"

Rule 93 of the Mysore Legislative Assembly Election Rules runs thus:

> "no election shall be called in question except by an election petition presented in accordance with the provisions of *this* chapter."

The question involved in issue number 5 has received our best and anxious consideration, because it is bare of all precedents, inasmuch as we are told that this is the first occasion on which such a question has been raised before an Election

Tribunal after the commencement of the Constitution. Before we proceed to discuss and record our finding on that issue, we are faced with a short point of law, *viz.*, whether we have jurisdiction to entertain such a contention at all in view of the fact that the Election Commission, India, in the Notification constituting this tribunal has mentioned that the election petition filed by the petitioner under Rule 94 of the Mysore Legislative Assembly Election Rules was duly presented. That doubt about our jurisdiction arises by reason of three rulings of election courts in India. They are (1) the Salem and Coimbatore *cum* North Arcot Case, (Indian Election Cases by Khanna, Vol. 1), (2) The 24 Paraganas (Municipal South) Case, (Indian Election Cases by Khanna, Vol. I), and (3) The Bulandshar District West Case, (Indian Election Cases by Khanna, Vol. 2.) In the first of these three cases, it was observed—

> "His Excellency being satisfied that the prior requisites, which have to be complied with before a commission is appointed for the trial of the petition have been complied with, it is not open to this commission which is a statutory body, to be created by His Excellency only after His Excellency is satisfied of the previous requisites being complied with, to go into this question, and the said question has not been in any way reserved for trial by these Commissioners."

The same view was taken in the other two cases referred to above. We do not think that these cases can be of much help to us, in the absence of anything to show that there was any provision in the rules in force in the Provinces from which those cases arose, similar to Rule 102 (3) of the Mysore Legislative Assembly Election Rules, which runs thus :

> "Notwithstanding the provisions of Rule 98, the Commissioner may inquire into the compliance of the petition with the Provisions of Rule 94, Rule 95 or Rule 97.'

Even on general principles we think that the mere fact that the Election Commission, India, has formed an opinion that the petition was duly presented, cannot preclude the respondent from urging the contention involved in issue number 5, inasmuch as he was not heard before the Election Commission, India made that observation. However, in view of the provisions of Rule 102 (3) referred to above, we hold that we have jurisdiction to go into and decide issue number 5, independently of any observation that has been made by the Election Commission, India, as regards the due presentation of the election petition. We therefore now propose to deal with Issue number 5.

7. The Legislative Assembly in Mysore was, at the time the vacancy occurred, and has been even now functioning under Article 385 of the Constitution of India. The vacancy that

occurred in the Assembly and which had to be filled was a casual vacancy. It has been provided in Article 388 (2) of the Constitution appearing under the chapter "Temporary and Transitional Provisions" that in filling casual vacancies and dealing with questions arising in that connection including the decision of doubts and disputes the law that is applicable is the law that was in force in the State at the time the constitution commenced, subject tosuch modifications as the President may be pleased to order. The rules that were in force in Mysore at the time of the commencement of the Constitution were the Mysore Constituent Assembly Election Rules, 1948, framed in pursuance of the directions contained in the Proclamation of His Highness the Maharaja, dated 29th October 1947, as modified and adapted on 23rd January 1950 by means of a notification of the Government under Section 42 of the Government of Mysore Act. Those rules are called 'The Mysore Legislative Assembly Election Rules'. Later on, after 20th May 1950, the same rules were issued in a consolidated form embodying all the modifications and adaptations made in the Government Notification referred to above. We have carefully gone through the provisions of the Provisional State Legislatures (Casual Vacancies) Order, 1950, made by the President, in order to find out in what respects and to what extent the Mysore Legislative Assembly Election Rules were modified. They were modified only in the following respects :—

(1) While under Rule 99 it was the State Government that had to appoint the Election Commissioner for the trial of a petition filed under Rule 94 and that Commissioner should be a Judge of the High Court of Mysore, under paragraph 5(1) of the Casual Vacancies Order, it is the Election Commission, India, that should appoint a person or persons whether by name ordesignation to be an election tribunal for the decision of doubts and disputes arising out of or in connection with the filling up of a casual vacancy.

(5) The power which the State Government had under Rule 98 to dismiss an election petition for the non-compliance of the provisions of Rules 94, 95 or 97, its power to condone delay in filing an election petition and its power under Rule 104 to permit the withdrawal of an election petition, still remain with the State Government but subject to such power being exercised in consultation with and in accordance with the opinion of the Election Commission.

Paragraph 5 (3) of the said order contains only a rule of construction. In all other respects the Legislative Assembly Election Rules remain intact. As regards the powers to be exercised by the authorities, paragraph 6 says :

"except as provided in paragraph 5, and subject to the provisions of Article 324, all powers exercisable by

> any authority under an election law immediately before the commencement of the Constitution shall, after such commencement, be exercisable by that authority."

On a careful perusal of these provisions we have no doubt whatever, that even after the commencement of the Constitution and the coming into force of the Casual Vacancies Order the authority to whom an election petition under Rule 94 of the rules has to be presented is the Government of Mysore.

8. Great emphasis was laid by the learned Counsel for the Respondent on the phrase 'subject to the provisions of Article 324' in paragraph 6 of the Provisional State Legislature (Casual Vacancies) Order, 1950, (hereinafter called by us as Casual Vacancies Order, 1950), and it was argued by him that under Article 324 of the Constitution all the powers that were vested in the Government before the commencement of the Constitution were transferred to the Election Commission, that the Election Commission, India, were given the power to conduct elections in the States also and that therefore after the Constitution it was the Election Commission, India, to which a petition under Rule 94 had to be presented. He urged that therefore the petition under Rule 94 of the Mysore Legislative Assembly Election Rules presented to the Government of Mysore was an invalid petition and even if that petition be ultimately forwarded to the Election Commission, India, it would not cure the initial defect and by the time the Election Commission perused such a petition, it was barred by time. We do not find anything in Article 324 to support such an argument although the learned Counsel for the Respondent fortified his argument by referring to the commentary of Basu on the Constitution. The learned commentator says as follows under Article 324:—

> "This article provides for the creation of an independent body named the Election Commission which shall have the following exclusive powers :—
>
> (*a*) The superintendence, direction and control of the preparation of the electoral rolls for all elections to Parliament and the Legislature of every State ; and of elections to the office of President and Vice-President :—
>
> (*b*) Conduct of all the above elections ; and
>
> (*c*) Appointment of Election Tribunals for the decisions of doubts and disputes arising out of or in connection with election to Parliament and to the Legislature."

He has also added—

> "the entire electoral machinery of the Union as well as of the States is thus placed at the hands of a Centralised

body, the Election Commission, which alone would be entitled to issue directions to Returning Officers, Polling Officers and others engaged in the preparation and revision of electoral rolls so that no injustice may be done to any citizen of India by any local Government."

We have carefully gone through Article 324 of the Constitution and we are unable to accept the construction which the Respondent's learned Advocate wishes to place on it. We are of opinion that the opening clause in.....Article 324 'the superintendence, direction and control' governs not merely the clause 'the preparation of the electoral rolls for all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution', but also the words 'the conduct of all elections to Parliament, etc., including the appointment of Election Tribunals for the decision of doubts arising out of or in connection with elections to Parliament and to the Legislatures of States.' We are unable to agree with the Respondent's learned Counsel that the phrase 'and the conduct of' between two commas is parenthetical and so it should be read as though it was an independent sentence beginning with 'the conduct of.' Our view is that it is elliptical and not parenthetical. We have therefore to read 'of' which appears after the words 'the superintendence, direction and control' after the comma and 'and' and before the words 'the conduct of' so as to read as follows when expanded:—'the superintendence, direction and control of the preparation of the electoral rolls for, and of the conduct of..... .....' If that be done, it will be seen that the entire clause 'the superintendence, direction and control' would govern the words 'the conduct of' also. It was pointed out to us by the learned Counsel for the Respondent that if it is merely the power of superintendence, direction and control that the Election Commission has over the conduct of elections in the States, it would not be consistent with the expression 'including the appointment of Election Tribunals' in that article as an originating authority cannot also be a supervising authority. We do not know what will have to be done when a permanent vacancy occurs and how Article 324 will have to be construed then. Possibly, it may be that by special rules framed by Parliament under Article 327 or by the State Legislature by Article 328 the Appointment of Election Tribunals will have to be regulated. In that event the Election Commission will have the power of supervision, direction and control over such election tribunals. But it is unnecessary for us on this occasion to speculate what it will be after the general elections when permanent vacancies occur.

9. Even if for the sake of argument we agree with the Respondent's learned Counsel that the Election Commission,

India, under article 324 is vested with the power of the conduct of all elections to the legislature of every State, it would not help the Respondent's learned Counsel's argument that the power to entertain an election petition was taken away from the Government and vested in the Election Commission, India. We say so, because the conduct of all elections to the Legislature of this State would normally end with rule 85, *i.e.*, from chapter VI up to the close of chapter VIII. It is no doubt true that the expression 'conduct of all elections' is under article 324 stated to include the appointment of Election Tribunals for the decision of doubts and disputes arising out of or in connection with elections. That stage begins with rule 99 which is replaced by paragraph 5 of the Casual Vacancies Order. Between the end of chapter VIII and rule 99 there are a number of provisions to which the expression 'conduct of elections' would not apply even if that phrase is understood in the extended sense in which it has been used in article 324. For example there are provisions relating to forfeiture of deposits. There are also provisions relating to the deposit of security in the Mysore State Government Treasury. If the argument of the learned Counsel for the Respondent is taken to its logical conclusion, it would mean that the deposits will have to be forfeited to the Election Commission, India, and the deposits in the Treasury will have to be made in Delhi. Such was not surely the intention of the framers of article 324. Moreover, the phrase 'including the appointment of election tribunals for the decision of doubts and disputes' would lead to the implication that but for that special phrase of inclusion it would not ordinarily be included. It is by an artificial definition that it is so included. Such artificial definitions will have to be strictly construed. If we do that, all the provisions from rule 86 to rule 98 (both inclusive) subject to the modifications referred to in paragraph 7 *supra*, remain unaffected. As rule 94 which is one of the rules appearing in the gap between the close of rule 85 and the beginning of rule 99 is thus unaffected, there can be no doubt that as provided in that rule it is the Government of Mysore that still has the power to receive an election petition. The phrase 'subject to the provisions of article 324' in paragraph 6 of the Casual Vacancies Order, in our opinion, means, subject to the general supervision, direction and control provided for in that article and nothing more. On a careful consideration of the matter, we are of opinion that the power of the State Government to receive an application filed under rule 94 of the Mysore Legislative Assembly Election Rules is not taken away by the Casual Vacancies Order, 1950, but still rests with the State Government. That is also clear by implication from paragraph 5(2) of the Casual Vacancies Order, 1950. If it was the intention of the President that, that power is taken away, there is no meaning in the Government of Mysore being allowed to exercise the power of dismissal under rule 98

although it is circumscribed by the proviso that it should be in consultation with and subject to the opinion of the Election Commission, India. Moreover, if the State Government has not the power to receive an application under rule 94, how could it proceed to dismiss that application?

10. It was next urged that the Election Commission, India, has in this case requested the State Government to take steps to fill the casual vacancies in the Legislative Assembly and it was in pursuance of that request that the Government issued the notification in the Official Gazette of 20th July 1950 for holding this bye-election. On the strength of that, it is urged that the power to conduct elections in Mysore vests in the Election Commission, India. We do not really think so. Such a direction to fill casual vacancies could be given by the Election Commission in the exercise of its power of supervision, direction and control of the conduct of all elections to the Legislatures of States under article 324. We therefore hold that the presentation of the petition under rule 94 of the Mysore Legislative Assembly Election Rules to the Government was a valid presentation to a duly constituted authority, that was entitled under the rules to receive such a petition. The result of the election was duly notified in the *Mysore Gazette* of the 25th August 1950. The election petition has been filed on 5th September 1950 well within time. Therefore no question of the petition being barred by time arises.

11. It was lastly urged by the Respondent's learned Counsel that although it may be that the Government of Mysore had power to receive a petition under rule 94, the petition is invalid, inasmuch as it has not been addressed to the Election Commission, India which is the authority to pass final orders in the matter after this Tribunal's Report is received. Even that contention cannot be accepted. It is not for the petitioner to state which is the authority that could grant him the relief prayed for he wants the relief to be granted by the authority in which, under the law in force, the power rests. What he is concerned with is a valid presentation of his election petition. Supposing in this case he had omitted to state in the title portion of his petition "before the Government of Mysore" and had merely stated "an election petition filed under rule 94 of the Mysore Legislative Assembly Election Rules" would it have been possible to dismiss his election petition? Our answer to that question is emphatically in the negative, in the absence of any rule to that effect. The analogy of plaints to petitions filed under rule 94 is inapplicable, because it has been expressly provided in order VII, rule I(a) of the Code of Civil Procedure that the Plaint should state the name of the Court in which the suit is brought, while there is no similar provision in rule 95 which deals with the contents of

an election petition. For the above reasons our finding on the fifth issue is that there has been a valid presentation of this election petition to a validly constituted authority and within the time prescribed by the rules and that this election petition is not liable to be dismissed *in limine* as contended by the Respondent.

12. Now as to issue number 4. It is contended by the Respondent's learned Counsel that it is necessary and proper to implead the Returning Officer as a Respondent in these proceedings and that the omission to do so is fatal to this election petition. In English law, there are no doubt some cases which support the view that where an election petition alleges misconduct on the part of the Returning Officer, he is a necessary party to the proceedings. That is because of the special provisions contained in the statutes in England. There are no similar statutory provisions in India. It is urged on behalf of the Respondent that even though there may not be any such statutes, if there is an imputation of misconduct in the election petition against the Returning Officer, he is, even in India, a necessary party. The learned Counsel for the Respondent has drawn out attention to the allegation in the petition that the order of rejection made by the Returning Officer was arbitrary and illegal and urged that it would amount to legal misconduct necessitating his being made a party to these proceedings. We cannot agree with that argument. The word 'misconduct' as used in the English statutes appears to us to mean malice in fact and not malice in law. But we are not called upon to express any opinion on that point, because the Respondent's learned Counsel has not been able to cite before us any authority in which it has been decided in India that if there is an allegation of misconduct against the Returning Officer, he is a necessary party an election petition. On the other hand, we have been able to find a case in which serious charges had been made against the Returning Officer and it was held that inspite of it he was not a necessary party. The Ambala Division Case, reported in India Election Cases by Khanna, Vol. IV, page 22 is an authority in support of that position. The only provisions in the Mysore Legislative Assembly Election Rules regarding the joinder of respondents are to be found in rules 94 (1) and 96. According to rule 94 (1), where the petitioner merely prays for relief that the election of the returned candidate be declared void and does not pray that he should be declared elected, the only party to be impleaded as a respondent is the returned candidate. It is purely a matter between them. Relief is claimed only against him. If in addition to his claiming relief by way of a declaration that the election of the returned candidate is void he also claims that he should be declared elected, the other candidates would be necessary parties. That is provided for in rule 96. Neither rule 94 (1) nor rule 96 says that the Returning Officer

is under any circumstances a party to the proceeding. Even on general principles that would be the position, because although it is the Returning Officer's order that is the subject matter of attack in an election petition based on the ground of improper rejection of the nomination paper, the Returning Officer is not interested in the relief. Nor can it be said that his presence before the Tribunal is necessary for the adjudiction of the matter involved in the proceedings. He is in the analogous position of a judicial officer. If an appeal is preferred against the decision of a judicial officer, the Judge will not be made a party. The Returning Officer, in holding a summary enquiry and rejecting a nomination paper, acts as if he were a judicial officer, and his order is in the nature of a judicial order. We therefore hold on the fourth issue that the Returning Officer is neither a necessary nor a proper party to these proceedings. In the light of that finding, the latter part of that issue does not arise for consideration.

13. Issue number 3.— There does not seem to be any force in the contention urged on behalf of the Respondent that the petitioner can only canvass in an election petition, the result of the election on the ground of any irregularity at the stage of the election and not on the ground of any irregularity at the stage of the scrutiny of the nomination paper. Such an argument would be opposed to the express provision in rule 108 of the Mysore Legislative Assembly Election Rules under which relief can be granted to the petitioner, if in the opinion of the Election Tribunal, there was improper rejection of the nomination paper and it has materially affected the result of the election of the returned candidate. We are unable to accept the argument of the Respondent's learned Counsel that the expression 'any irregularity or corrupt practice' in rule 94 (1) should be read as ejusdem generis with "corrupt practice". In other words, what is urged is that the irregularity should be something akin to corrupt practice to attract the provisions of rule 94 (1). If that argument were sound the expression 'any irregularity' would have come after the words 'the corrupt practice' and not before. The scheme of the Act is also against such a construction because if the petitioner does not avail himself of the remedy provided in rule 44-A and if he is not allowed to file an election petition on the ground of improper rejection of his nomination paper, he would be without a remedy altogether. That was not the intention of the legislature. We therefore hold that the contention of the Respondent involved in issue number 3 is not tenable.

14. Coming next to issue number 2, *viz.*, whether the petitioner by reason of the fact that he preferred an application under rule 44-A to the Government cannot seek redress by means of this election petition on the ground of improper rejection of

his nomination paper by the Returning Officer, we have to say that there is nothing in rule 44-A to bar an election petition under rule 94. Wherever it is the intention of the framers of the rules that a provision in any rule operates as a bar to the remedy provided for in another rule it will be mentioned in the former rule that it is final. For example, see rule 27 (2) of the Mysore Legislative Assembly Election Rules in which the order made thereunder is final. Rule 44-A is a summary and wholesome remedy provided for in the statute for a petitioner, who is aggrieved by an order of improper rejection of his nomination paper by the Returning Officer. If the petition filed under Rule 44-A be disposed of in his favour a good deal of unnecessary litigation and cost would be saved and at the earliest stage the rot would be stemmed without the necessity of the petitioner filing a petition under rule 94. He has undoubtedly a dual remedy. Even if he files an application under rule 44-A and fails it is still open to him to file a petition under rule 94. Any order that may be made on a petition under rule 44-A would not bar as *resjudicata* the remedy open to him under rule 94, because the enquiry under rule 44-A is only summary, while the trial of an election petition should be in accordance with the provisions of the Code of Civil Procedure. Moreover, in this case we need not trouble ourselves with that aspect, inasmuch as no order on merits was passed on the application under rule 44-A. Our finding therefore on issue number 2 is that this petition is not barred by reason of the Petitioner having filed an application under rule 44-A.

15. There is not much substance in the contention of the respondent that has given rise to issue number 1. It is no doubt true that Shri G. V. Ramachar has subscribed to two nomination papers, *viz.*, one of his own and the other that of the petitioner. But he has done so in different capacities. It is provided in rule 37 that any person whose name is registered on the electoral roll of the constituency may subscribe as proposer or secouder as many nomination papers as there are vacancies to be filled but no more. That Sri G. V. Ramachar's name is found in the electoral roll of the Bangalore City general constituency cannot be doubted or disputed. He was therefore eligible under rule 37 to subscribe as proposer. But as there was only one vacancy to be filled, he could subscribe to only one nomination paper as proposer. That is what he has actually done. It is no doubt true that he has signed his own nomination paper. But he has subscribed that paper in his capacity as a candidate and not as proposer. The expression 'as proposer should be given its literal meaning as otherwise that expression would be regarded as superfluous. It is a well established rule of construction of statutes that the words used should be given their natural meaning and that no words should be disregarded as superfluous. That principle is not only followed in recognised works on rules of interpretation

but also in the Hindu system of interpretation as is enunciated by Jaimuni in his Meemamsa Sutres :—

शब्दाधिक्यात् अर्थाधिक्यम्

It was pressed on our attention by the learned Counsel for the Respondent that to allow a person when there is only one vacancy to subscribe as proposer to one nomination paper and as candidate to another nomination paper will be against all good morals. We are not concerned with the moral of the matter and we have to administer the law as it is and not as it ought to be. Our finding on issue number 1 is that the contention that there was no valid nomination of the petitioner by reason of the fact that Sri G. V. Ramachar subscribed to two nomination papers is untenable.

16. As regards issue number 7, we have to say that on the evidence we have no doubt whatever, that Shri G. V. Ramachar who has subscribed to the nomination paper of the petitioner as proposer is the identical person as the individual whose name appears in the electoral roll as bearing serial number 8779. When his nomination paper was scrutinised by the Returning Officer no candidate appears to have taken objection to the identity of G. V. Ramachar nor has the Returning Officer stated anywhere in his order that his identity was doubtful. Sri G. V. Ramachar is a well known Advocate practising in Bangalore City. P. W. 2, Sri N. Bheemacharya, another Advocate practising in Bangalore City has given evidence that he was present when Sri G. V. Ramachar affixed his signature to the nomination paper of the petitioner as proposer and has identified Sri G. V. Ramachar who was examined before the Court as P. W. 1 as the proposer of the petitioner. We see no reason to disbelive the evidence of P. W. 2 as it is he that has filled in all the columns in the petitioner's nomination paper, Exbt. B except the signatures. He has given evidence that Sri G. V. Ramachar is residing in 6th Road, Chamarajpet, Bangalore City. A reference to the electoral roll, Exbt. C-6 relating to Chamarajpet, Bangalore City, shows that his electoral number is 8,779 and that he is living with his father Vedanthi Krishnachar in the same house. The latter's number in the electoral roll is 8778 and the door number of the house is 26. Sri G. V. Ramachar is described as a person possessing the qualifications of a law graduate being a B,A., LL.B. In order to cast a doubt if possible, on the identity of G. V. Ramachar, the Respondent's learned Counsel has got elicited that there is another person by name U. R. Ramachar and points out that a confusion might have arisen in the minds of the Returning Officer about the identity of the proposer. The Returning Officer does not say so in his order. We are satisfied from the evidence

of P. W. I that U. R. Ramachar is a resident of Gandhinagar, Bangalore City, that he is a Hardware Merchant and that he is not B.A., LL.B. There could therefore be no room for any doubt as regards the proposer's identity. Our finding on the 7th issue is in the affirmative.

17. The last and the most important issue in the case that requires consideration is issue number 6. Rule 43 (1) provides that nomination paper may be rejected on any of the following grounds :—

(*a*) that the candidate is not qualified under the Rules ;
(*b*) that there has been any failure to comply with any of the provisions of rules 36 and 40 ;
(*c*) that the proposer or seconder is not registered in the electoral roll of the constituency ;
(*d*) that the signature of the candidate is not genuine or has been obtained by fraud.

Curiously enough, the Returning Officer does not state in his order Exbt. B-3 under which of these clauses (*a*) to (*d*) he has made the order of rejection. Clauses (*a*) and (*d*) do not apply, because it is not the contention of any one that the candidate is not qualified under the rules and that his signature is not genuine or has been obtained by fraud. Clause (*c*) does not apply, because Sri G. V. Ramachar is registered in the electoral roll of the constituency. In this connection it may be mentioned that the constituency is the whole of Bangalore City and his electoral roll number therein is 8779. They are undisputed facts and that would be enough to show that his nomination paper was not liable to be rejected under clause (*c*). We are only now left with clause (*b*) and we have to see whether there has been any failure to comply with any of the provisions of rules 36 and 40. There is no non-compliance with the provisions of rule 40 because the petitioner has deposited the required amount in a Government Treasury. Rule 36 provides that a nomination paper should be completed in the manner prescribed in Form I and subscribed by the candidate himself as assenting to the nomination and by two persons as proposer and seconder whose names are registered in the electrol roll of the constituency.—Even the requirements of that rule are satisfied because the nomination paper Exhibit B of the petitioner is completed in the manner prescribed in Form I and is subscribed by himself as assenting to his nomination paper and by G. V. Ramachar and N. Bheemachar as his proposer and seconder respectively and their names are registered in the electoral roll of the constituency. Curiously enough, the Returning Officer merely says in Exbt. B-3 that "since the nomination paper is not properly proposed, the same is rejected." It is very difficult to understand what he means by it. He has no doubt referred in that order to an objection taken by one of

the candidates that the name of the proposer G. V. Ramachar, electroral roll number 8779 is not in the corrected additional electroal roll in the 7th Division as noted in the nomination paper. Perhaps that objection seems to have found favour with the Returning Officer, although he does not say so. But there is not substance in that objection. Merely because his electoral roll number 8779 is not in the corrected list Exhibit D, addenda and corrigenda, in the 7th Division as noted in the nomination paper, that is no good ground for rejecting the nomination paper. The electoral roll means the original electroal together with the amendment made in the initials of G. V. Ramachar, on his application for that purpose. They should be read together in order to find out if he has been properly proposed, as Exhibit D, is a mere correction of the initials and does not give all the other particulars. In the original electoral roll Exhibit C.-6, his number is given as 8779, name as V. K. Ramachar, residence as number 26, 6th Road, Chamarajpet and his qualifications as B.A., LL.B. All those particulars are correct, except the initials. He merely applied to the Municipal Commissioner to amend his nitials as G. V. The Returning Officer was summoned to produce that application to show what exactly the prayer of G. V. Ramachar was. Curiously, the Returning Officer has not produced it and it is said to be not forthcoming in the records of the Municipal Office. In the absence of its production, we have to accept the evidence of G. V. Ramachar that his application related to the amendment of his initials and nothing else. '6-A Division' under which the serial number 8779 is noted in Exhibit D, the amended list, appears to us to be a printer's devil. We do not know why it should have scared away the Returning Officer and made him reject the nomination paper on that ground. It was his duty, if he felt any doubt about the identity of the proposer, to have referred to the original electoral roll to satisfy himself; if he had only done that in a moment he could have discovered that division number 6-A referred to in Exhibit D was a printer's devil and that the entry against serial number 8779 even in the amended electoral roll related to Sri G. V. Ramachar, and to none else. It is much to be regretted that the Returning Officer did not take even that little trouble when the rule contemplates that he may even hold a summary enquiry to satisfy himself about the identity and the eligibility of the proposer.

18. The next and the more important point for consideration, apart from the order of the Returning Officer, is whether Form No. 1 has been properly filled up by the petitioner in Exhibit B in accordance with the requirements of that form. Bangalore City Municipal area had then been sub-divided into nine divisions and some of the divisions had been sub-divided into A & B. We are told that these divisions were effected on territorial

and population basis. It must be for the purposes of Municipal administration and also for holding elections connected with the Municipality. It was necessary to do so, because in the case of a municipal election each constituency is not the whole of Bangalore City but is one of the several divisions in that City. Candidates stand for election from each of those divisions. It is necessary for the electorate in a case like that to know the serial number of the candidate in the particular division. But it is not so in the case of an election to the Legislative Assembly, where Bangalore City forms a single unit and a single constituency. The electorate of the whole of Bangalore City had to elect only one candidate. We think it was therefore right that different serial numbers were not given to each sub-division and that serial numbers were continuously given for the whole of the Bangalore City. The point now is whether, inspite of that, it was necessary for the proposer to state in Exhibit B the division in which he resided. He has no doubt stated the division as number 7. That is a correct description, because it is in evidence that Chamarajpet 6th road in which he is residing belongs to that division. The Returning Officer cannot expect him to make an incorrect statement in the nomination paper that he was residing in No. VI-A division although he was actually residing in number 7 division, merely because in Exhibit D, on account of some printer's mistake, serial number 8779 appears under 6-A division. If he had mentioned 6-A division in Exhibit B he would have been telling an untruth. The question now is whether it was necessary at all for G. V. Ramachar to mention any division in column 8 of the nomination paper. Before we proceed to consider that question we may as well consider the law as regards the directory and mandatory provisions in statutes, because if a mandatory provision is contravened it would invalidate the nomination paper but it would not be so in the case ot directory provision and in such cases what we have to see is whether that provision has been substantially complied with. Assuming that there is a discrepancy between what is stated in the nomination paper as regards the division and what is stated in Exhibit D, the discrepancy is so trival that no tribunal would take serious notice of it and the Returning Officer ought not to have attached undue importance to it. In this connection, we may refer to the observations of the learned Chief Justice in 51 Mysore High Court Reports 261 at page 264

> "The rules do not require that there should be literal or verbal correspondence between the entries in the nomination papers and the entries in the electoral roll. The question always is whether the candidate can be properly identified ?"

When we are on this topic it may also be useful to refer to the following observation of Lord Penzance in Howard Vs.

Boddington, (L. R. 2 Probate division 203 at 211) cited in Samastipur Case, Indian Election Cases by Khanna, Vol. IV and also in 21 Mysore Law Journal 370 at 375.

"No universal rule can be laid down for the construction of statute as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of the courts of Justice to try to get at the real intention of the ligislature by carefully attending to the whole scope of statute to be construed. You cannot go further than this that in each case you must look to the subject-matter and consider the importance of the provision that has been disregarded, and the relation of that provision to the general object iutended to be secured by the act and upon a review of the case in that aspect decide whether the matter is what is called imperative or only directory."

The object of the rule requiring that the number of the sub-division should be stated in the nomination paper is that in cases of doubt the identity of the candidate, proposer or seconder may be discovered. It follows therefore, that if there are sufficient particulars to enable any one reading the nomination paper to identify the proposer, candidate or the seconder, that would be enough and any discrepancy in stating the number of the sub-division in the nomination paper would not invalidate it. In this connection the following observations in Samastipur Case (Indian Election Cases by Khanna, Vol. 4) are note worthy :—

"Now the object of the provision evidently is that there can be no difficulty in tracing the name of identifying the person, If this object as well be achieved, even without strict adherence to the form, by the particulars given therein, it would be contrary to justice, equity and good conscience to invalidate the nomination paper and to deny the elector a fair and free opportunity of electing a candidate according to his preference. If the whole scope of the rules and regulations be taken into account, it cannot be the intention that a mere omission to describe the sub-division should be fatal to a nomination paper."

As already observed by us, there would be no difficulty in tracing who the proposer of the petitioner is by referring to the particulars given in the nomination paper, although it may be there is a slight discrepancy in the number of the sub-division between the original electoral roll and the amended list.

19. The footnote to column 8 in Form I runs thus :

"When the electoral roll is sub-divided and separate serial numbers are assigned to the electors entered in each sub-division a description of the sub-division in which the name of the proposer or seconder as the case may be is entered, must also be given."

It is not stated there as to what should happen if it is not given. Perhaps the implication is that if the footnote is attracted and if the sub-division in which the name of the proposer appears is not given, it would invalidate the nomination ; but in order to attract that footnote two requisites are essential, *viz.*, (1) that the electoral roll is sub-divided and (2) that separate serial numbers are assigned to the electors entered in each sub-division. In this case the second requisite is absent, inasmuch as there is a continuous serial numbering for the whole of Bangalore City and no separate serial numbers are assigned to the several divisions or sub-divisions. Therefore, even if that footnote be regarded as a mandatory provision, it is inapplicable to the present case. It was urged by the learned Counsel for the Respondent that in the sentence " Where the electoral roll is sub-divided and separate serial numbers are assigned to the electors entered in each sub-division," the word 'or' should be substituted for 'and'. We find it difficult to do so. The word 'and' should receive its natural and literal meaning and in our opinion, we cannot read 'or' for 'and' in that clause. In this connection, we may refer to the following observations of the learned Chief Judge in 47 Mysore High Court Reports 97 when a similar argument was pressed and was repelled—

> "Mr. Gopivallabha Iyengar for the Respondent has urged before us that "and" appearing in the words "age and date of birth" should be interpreted in this instance as if equivalent to "or", so that we should read those words as if they had run "age or date of birth."

There are instances in statutory provisions where it is necessary in order to give an intelligible and appropriate meaning to a collocation of words to interpret "and" as if it were equivalent to 'or'. But I do not think this is one of those instances. So far as I can see, there is no difficulty in giving the full meaning to the words "age and date of birth", reading them according to their literal meaning without having recourse to any technical form of interpretation so as to read them 'age or date of birth". And it is in the highest degree improbable in my opinion that, if the Government had intended to prescribe a form in which the candidate was to enter his age or his date of birth, they would have used the words 'age date of birth'."

Therefore it was unnecessary for the proposer to have mentioned in column 8 of Exbt. B any division or sub-division. The mentioning of it is a mere surplus age. If there was any discrepancy between it and what is contained in Exbt. D, the discrepancy in the surplus age ought to be ignored altogether. In this connection we may refer to rule III of the Mysore Legislative Assembly Election Rules—

> If a question arises for the decision of a Returning Officer or Presiding Officer under these rules whether an entry in an electoral roll relates to a particular person, the Returning Officer or Presiding Officer, as the case may be, may, for reasons to be recorded in writing, decide that the entry does or does not relate to the said person, notwithstanding any clerical or printing errors therein."

The Returning Officer in this case in making his order Exbt. B-3 has clearly overlooked the provisions of rule III. We therefore hold on the first part of the 6th issue that the nomination paper of the petitioner is valid and that there has been an improper rejection of the petitioner's nomination paper by the Returning Officer.

20. The next point on which elaborate arguments were addressed by the learned Counsel for the Respondent was as regards the latter part of that issue, *viz.*, whether the improper rejection of the nomination paper has materially affected the result of the respondent's election. Sri V. Krishna Murthy, learned Counsel for the petitioner, relies strongly on the proposition that an improper refusal or rejection of a nomination paper is such a grave and material irregularity that a presumption arises that it materially affected the result of the election and such a presumption would require the strongest proof for its rebuttal and it lies heavily on the Respondent to rebut such a presumption. There are several English and Indian cases in support of that proposition. We may just refer to some of them, *viz.*, Islington case, Rohtak Case, Agra District Case, Golaghat Case and Cawnpore District Case. Sometimes, a difference is drawn between the case of an improper rejection, a nomination paper and an improper acceptance of it. While in the former case it has been held, as already mentioned, in a number of cases that there is a strong presumption that the improper rejection has materially affected the result of the election and that the onus of rebutting that presumption lies, very heavily on the respondent, there is no such presumption in a case of an improper acceptance of a nomination paper and in that case the onus of proving that the improper acceptance has materially affected the result of the election lies very heavily on the petitioner. The reason

for that distinction is obvious. It has been summarised thus in the Law of Elections and Election Petitions by Jaganarain at P.403.—

> "A distinction has sometimes been sought to be drawn between the improper admission and improper rejection of a nomination paper. In the case of an improper rejection of a nomination paper, the electorate is deprived of a right to vote for the person whose nomination is improperly rejected. The case of an improper admission of a nomination paper seems to be different, as in such a case the electorate had an opportunity of voting for the candidate who were in the field".

He cites Belgaum Case, (Indian Election Petitions, Vol. 2, p. 31) in support of that statement. We entirely agree with the view taken about the existence of such a distinction. On the strength of rule 108 of the Mysore Legislative Assembly Election Rules, it was urged by the learned Counsel for the Respondent that, having regard to the language employed in that rule, the onus of proving; whether it be a case of improper rejection of a nomination paper or improper acceptance, that such improper acceptance or rejection has materially affected the result of the election always rests upon the petitioner and that all these decisions which hold the view that there is a presumption in the case of an improper rejection do not lay down good law. In other words, what he urges is that having regard to the language of rule 108 there is no scope for making any presumptions at all, inasmuch as before the relief is granted under that rule, the Tribunal must be satisfied that the result of the election is materially affected. We are unable to agree with him. There is nothing in the language of the rule 108 which excludes the raising of presumptions. According to that rule the conclusion has to be arrived at by the Tribunal from all the materials before it which may even include presumptions. The learned Counsel for the Respondent has not been able to place before us any case of an improper rejection of the nomination paper by the Returning Officer in which the presumption that it materially affects the result of the election has not been drawn. On the other hand, the cases cited by him are all cases of improper acceptance of the nomination paper. He cited the following observation of Baron Martin in Warrington case cited with approval in Bakargang North Case :—

> "I adhere to what Mr. Justice Willes said at Lichfield that a judge to upset an election ought to be satisfied beyond all doubt that the election was void and that the return of a member is a serious matter and not to be lightly set aside".

He further relied on one observation in that case that the petitioner must establish as a fact that the result was materially affected and not might have been affected. He also cited the following observations of Sir Asuthosh Mukharjee in I. L. R., 47 Calcutta :—

> "An election ought not to be held invalid by reason of the transgression of the law—when the court is satisfied that the result of the election, *i.e.*, the success of one candidate over the other could not have been affected by those transgressions".

With great respect we must say that those observations relied on by the Respondent's learned Counsel are perfectly correct having regard to the facts of those cases. None of those cases related to an improper rejection of a nomination paper. There is nothing in any of those cases to support the view that no presumption could be raised in the case of an improper rejection of the nomination paper that it has materially affected the result of the election.

21. We are therefore of opinion that there is a strong presumption in favour of the petitioner that it has materially affected the result of the election. We have now to see whether the respondent has led any evidence to rebut that presumption, No evidence has been adduced on behalf of the respondent except that of himself. There is nothing in his evidence to warrant us in holding that the presumption in favour of the Petitioner has been rebutted. An attempt has been made by getting elicited in the evidence of the Petitioner's witnesses some facts with a view to show that even if the petitioner's nomination paper had been accepted, he would have failed in the election. The first of those facts is that the petitioner stood as an independent candidate while the respondent stood on Congress ticket. It was urged that in these days of democracy a candidate standing on an independent ticket has no chance of winning as against a candidate standing on a party ticket. We are unable to accept that as a general proposition, because it all depends upon the influence with the electorate that is commanded by a candidate. Petitioner has given evidence that he had been a member of the Representative Assembly for four years from the small industries constituency, is a President of that Association for the last seven years, was a member of the Bangalore City Municipality elected each time from 1934 to 1947, that in the Representative Assembly Election in 1946 he stood as an independent candidate and defeated one Ganga Setty a Congress candidate and the latter forfeited security. These facts are enough to show that the petitioner is a fairly influential man. The next fact got elicited is that the petitioner was admittedly ill on the date of the election and that even if his nomination paper had not been rejected, he would have not been in a

position to go and canvass votes. We are unable to accept it because he might have been ill, but still he could have employed others to work for him. It was urged by the learned Counsel that the Petitioner has not sworn to that fact. The Respondent should have specifically questioned him on that point. The third fact is that the petitioner failed in the recent Corporation Elections. No adverse inference can be drawn against him by reason of that fact, because the two elections do not admit of much comparison, inasmuch as in the bye-election out of which this election petition has arisen the electorate was on the basis of a limited franchise, while in the recent elections it was on the basis of adult franchise and in the bye-election to the Legislative Assembly the constituency was the whole of Bangalore City, while in the Municipal Election it was a particular division in Bangalore City. The last point that was urged is that the petitioner had gone out of Mysore for a long time after he became ill in 1947. We do not know how that circumstance would affect his position unless there is something to show that he lost his popularity on account of his prolonged illness.

22. It is in evidence that the electorate for the bye-election out of which this petition has arisen consisted of 14,383 voters. Out of that number only 5,467 voted, which shows that 65 percent of the electorate did not exercise their right of franchise. It is not unlikely that if the Petitioner had stood for election, many of them would have voted for him and he would have been able to secure more votes than the Respondent. At any rate, there is no evidence on behalf of the Respondent to show that most of them would not have voted for the petitioner. It is also not unlikely that because the petitioner was not in the field as his nomination paper was rejected, some of the persons who would have voted for him voted for the Respondent when they had no choice. It is not known whom they would have preferred if it were a matter of choice between the petitioner and the respondent.

23. For the above reasons we hold on the latter part of the 6th issue that the election of the Respondent has been materially affected by the improper rejection of the petitioner's nomination paper by the Returning Officer. We therefore recommend that the election of the Respondent be declared void.

24. Coming next to the question of costs, what is urged on behalf of the Respondent is that it was not he that took objection to the nomination paper of the petitioner before the Returning Officer and he has sworn that he even requested the Returning Officer not to reject the nomination paper of the petitioner on a technical ground and therefore he, being an innocent party, should not be saddled with costs when the rejection of the petitioner's nomination paper was entirely due to the mistake of of the Ruturning Officer. Sri V. Krishna Murthy for the petitioner has urged that whatever might have been the attitude of

the Respondent before the Returning Officer he ought not to have contested this election petition and now that he has done so and the matter was fought out before this Tribunal seriously, this is a proper case in which the Respondent should be called upon to pay petitioner's costs of this petition. We are inclined to agree with the argument of the petitioner's learned Counsel. We recommend that the Respondent should be directed to pay the costs of the Petitioner, which we assess at Rs. 100.

This unanimous Report of the Tribunal was delivered by the President dictating it to the Steno-grapher in open Court.

S. VENKATA RANGA IYENGAR,
President.

K. C. LINGIAH GOWDER,
Member.

S. KANAKARATNARAJ,
Member.

By Order of His Highness the Maharaja,

N. R. JAYA RAO,
Legal Remembrancer and
Secretary to Government,
Law Department.